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evidence was offered either by the movant or the defendant, shows the appointment of a committee was erroneous.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 357.]

Error to Circuit Court, Scott County.

Proceedings by Bettie Redwine, administrator of S. L. Redwine, deceased, against T. O. Gilmer. From judgment appointing a committee for the estate of said Gilmer, as a convict, he brings error. Reversed.

O. M. Vickers, of Wise, and *S. H. Bond* and *W. H. Nickels*, both of Gate City, for plaintiff in error.

W. S. Cox and *J. P. Corns*, both of Gate City, and *Coleman & Carter*, of Big Stone Gap, for defendant in error.

CHARLES *v.* McCLANAHAN et al.

Sept. 22, 1921.

[108 S. E. 858.]

1. Deeds (§ 94*)—Prior Stipulations Are Merged in the Deed.—In the absence of fraud or mistake in the instrument itself, prior stipulations and understandings are merged in the final and formal deed executed by the parties.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 422.]

2. Reformation of Instruments (§ 17 (1)*)—Grantee Held Not Entitled to Have Mineral Reservation Stricken from Deed.—Where a deed expressly reserved one-half of the minerals, the grantee, accepting the deed with knowledge of the reservation, was not entitled to have the deed reformed by striking the reservation on the theory that the grantor intended to sell and he intended to buy the entire interest of the grantor in the land.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 903.]

3. Reformation of Instruments (§ 17 (1)*)—Grantor Not Entitled to Reformation of Deed Reserving One-Half of the Minerals So as to Reserve All.—Where grantor reserved one-half the minerals under the mistaken belief that he owned one-half only, he was not entitled to reform the deed; the reservation as made representing the agreement of the parties when made.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 905.]

4. Quieting Title (§ 7 (2)*)—Grantee's Deed Omitting Mineral Reservation Held Cloud on Grantor's Title.—Where land was conveyed by deed reserving one-half the minerals, and the grantee in turn conveyed by deed without reservation, such deed constituted a cloud on

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

the title of the original grantor which he was entitled to have removed.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 514.]

5. Reformation of Instruments (§ 32*)—Failure to Assert Incorrectness of Deed for 17 Years a Waiver.—Where a grantee accepted a deed reserving mineral rights as a full performance of the contract to convey and made no claim for 17 years, that the reservation should not have been included, he must be held to have waived his rights.

Sims, Jr., dissenting.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 883-884.]

Appeal from Circuit Court, Buchanan County.

Suit by Green Charles against George W. McClanahan and others, with cross-bill by defendant named. From the decree plaintiff appeals. Reversed and rendered.

W. A. Daugherty, of Grundy, for appellant.

Williams & Combs, of Grundy, for appellees.

DUTY et al. v. HONAKER LUMBER CO. et al.

Sept. 22, 1921.

[108 S. E. 863.]

1. Boundaries (§ 26*)—Except When Relief Authorized by Statute or Some Peculiar Equity Is Sought, Equity Courts Cannot Settle Title and Boundaries.—Except when the relief authorized by the Code 1919, § 6248, is sought, or there is some peculiar equity, courts of equity are without jurisdiction to settle disputes regarding titles and boundaries.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 610.]

2. Equity (§ 365*)—Petition and Cross-Bills on Matter Where Law Remedy Was Adequate Should Have Been Dismissed without Prejudice.—The petitions and cross-bills of those who were not parties defendant to an original bill in equity, claiming title and asserting boundaries, and who had adequate remedy by ejectment, should have been dismissed without prejudice, since they could not be jeopardized by a decree to which they were not parties.

[Ed. Note. For other cases, see 1 Va.-W. Va. Enc. Dig. 165.]

3. Equity (§ 348*)—Relief Denied Where Essential Allegations Cannot Be Proved with Reasonable Certainty because of Deaths.—Where if the allegations of the original bill had been proved, the relief prayed would have been afforded but all of the parties to the original transactions are dead and there is no written evidence of value and any conclusion would be conjectural and founded upon a random guess,

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.